

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FAROUK SYSTEMS INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 4:15-cv-00465
)	
AG GLOBAL PRODUCTS, LLC d/b/a/)	
FHI HEAT, LLC and)	
SHAUKY GULAMANI)	
)	
Defendants.)	

EXPERT REPORT OF MICHAEL J. BARONE

I. Introduction and Qualifications

1. I am a Professor of Marketing and University Scholar at the University of Louisville. I received a BA in Economics in 1984 from the University of Michigan, a MBA from George Washington University in 1990, and a Ph.D. in marketing (with psychology as a cognate area) from the University of South Carolina in 1994. I have been hired as an expert witness in fifteen other matters (the majority involving trademark issues) as indicated in the curriculum vitae (C.V.) contained in Appendix A to this report. In this capacity, I have conducted surveys and offered critiques of surveys conducted by other experts. I have also served as a marketing consultant to a number of firms and organizations.

2. I have published over forty articles (listed in full on my C.V.) on consumer psychology in the leading marketing journals. Virtually all of these articles involve empirical research conducted using experimental methodologies that have successfully gone through rigorous peer-review in academic journals with acceptance rates at or below ten percent. In working on these articles, I have conducted hundreds of empirical studies across various product and service categories. Based on my publication record, I have been formally recognized as one of the leading researchers in marketing and consumer

psychology. As a result of my expertise, I have also been appointed to the Editorial Review Board, and have served as reviewer, for the leading marketing journals. In these roles, I have reviewed the experimental methodologies employed in literally hundreds of empirical studies and Editors have relied upon my expertise in making decisions to accept or reject manuscripts.

II. Nature of the Assignment

3. I have been asked to conduct a survey to assess the likelihood that relevant consumers¹ would confuse the hair styling products sold by AG Global Products, LLC d/b/a FHI Heat, LLC and Shauky Gulamani (hereafter, "Defendants") with the hairstyling products sold by Farouk Systems Inc. (hereafter, "Plaintiff"). I am being compensated at an hourly rate of \$500.00 for my time on this matter. My compensation in no way depends on the outcome of this litigation.

4. My survey indicates a net confusion level of 10.5% that reflects the level of confusion observed in the test group adjusted for that found in the control group. What follows in this report are discussions regarding (1) my understanding of the case, (2) the methodology of the survey that was conducted, and (3) and survey results. I understand that discovery is ongoing in this case; I therefore reserve the right to revise and/or supplement my report based on additional materials or information that may become available.

III. Case Background

5. Based on the Plaintiff's First Amended Original Complaint and Application for Injunctive Relief (hereafter, the Complaint), it is my understanding that (1) many of the Plaintiff's products, including its Chi G2 hair styling iron, are known for a vibrant red color on a black or charcoal background color, a distinctive color pattern used by the Plaintiff to differentiate its offerings from the competition and (2) the Defendant sells a product, the FHI Heat thermal styling brush that also employs

¹ The relevant universe of consumers, as discussed in greater detail in paragraph ¶8 of this report, involves recent and prospective purchasers of hair styling tools.

a red and black color pattern (Complaint at ¶14). It is also my understanding that, as a consequence of this similar color scheme, the Plaintiff alleges that consumers will perceive the Defendants' FHI Heat thermal styling brush to be "confusingly similar" to the Plaintiff's products, including its Chi G2 hair styling iron (Complaint at ¶14).

6. Accordingly, I designed and conducted an online survey to assess the likelihood that relevant consumers will experience confusion between the Defendants' FHI Heat thermal styling brush and the Plaintiff's Chi G2 hairstyling iron. As an overview, a sequential survey format was employed, given that consumers in the marketplace may sequentially encounter both products during their online search for hair styling tools. The survey design involved first exposing participants to an initial set of three products involving a hair styling product, a toothpaste product, and a shampoo product (hereafter, the "first product set"). Participants then encountered three different products (hereafter, the "second product set") from each of same three categories utilized in the initial product set. For each of these latter products, participants were asked whether or not that item involved the same brand as, or was made by the same company as, the corresponding item shown in the first product set (a copy of the questionnaire is attached to Appendix B of this report, while images shown in the test and control group are included as, respectively, Appendix C and Appendix D to this report). The details of the survey methodology, followed by a reporting of the results, are presented next.

IV. Survey Methodology and Design

7. Participants for this online survey were recruited from a U.S. adult consumer panel operated by Qualtrics, the "world's leading enterprise survey technology provider" (www.qualtrics.com/about/). The firm adheres to the ESOMAR International Code on Market and Social Research and has a number of leading firms and academic institutions as clients. Online

methodologies represent a standard and acceptable approach in conducting research in academia and business as well as in matters of litigation, including trademark cases.

8. Participants were consumers who had purchased hair styling tools in the last six months and/or were planning to purchase hair styling tools in the next six months. Age, gender, and region quotas were created using population distribution data from the U.S. Census Bureau for adults 18 years of age and older. In order to gain access to the survey, participants must have indicated residing in the United States and being eighteen years of age or older. An additional qualifying question determined if participants, or anyone in their household, were employed in an occupation that would give them unusual knowledge of matters relevant in this case, specifically, an advertising agency, a market research firm, or a manufacturer/distributor/retailer of hair care products. Individuals indicating they, or someone in their household, were employed in such occupations were terminated from the survey.

9. Participants were also asked whether they had purchased hair styling tools (e.g., thermal styling brushes, styling irons, hair dryers) in the last 6 months or whether they planned to do so in the next 6 months. To avoid sensitizing participants to the hair styling products at issue in this matter, this question was embedded within similar measures asking participants to indicate recent or planned purchases for shampoo and toothpaste products and the order in which these three measures were presented was randomized. Individuals failing to state that they had purchased hair styling tools in the last 6 months or planned such a purchase in the next 6 months were terminated from the survey. This question ensures that the sample for this survey was representative of a universe appropriate for examining the Plaintiff's allegation regarding confusion involving its hair styling tools and those sold by the Defendants.

10. In order to continue with the survey, participants also needed to: (1) correctly answer a quality control check to ensure they were paying adequate attention to the instructions and (2) report that

they were wearing eyeglasses or contact lenses during the survey if they normally did so while reading material on a computer. Results regarding all qualifying questions are included in the screening summary attached to Appendix E of this report.

11. A total of 418 participants who passed all qualifying questions were randomly assigned to a test or control group. Six participants, 2 from the test group and 4 from the control group, provided responses indicating a failure to demonstrate sufficient care in completing the survey questions designed to assess confusion. Two additional participants (1 each from the test and control group) failed to validate they had provided truthful answers on a final question presented at the end of the survey. Removing these 8 participants yielded a final sample size of 410 participants, 206 in the test group and 204 in the control group.

12. Participants assigned to the test group were provided with preliminary instructions (“On the following screens, you will be shown several products. Please click “Next” when you are done looking at each product. Note that, depending on the monitor and browser you are using, you may need to wait a few seconds for each image to load; you may also need to scroll down to fully view the image.”). At that point, participants were shown, one at a time, the three products included in the first product set (the Defendants’ FHI Heat thermal styling brush featuring the red and black color pattern at issue in this matter; a tube of Tom’s Simply White toothpaste; and a bottle of TRESemmé Healthy Volume shampoo). The order in which these three products were shown was randomly rotated in order to avoid order bias.

13. It was desirable to isolate the confusion arising from the shared red and black color pattern between the Plaintiff’s and the Defendants’ offerings versus other brand elements associated with the two products. In this regard, the term “FHI” on the Defendants’ thermal styling brush may create confusion due to its similarity to the “Chi” term on the Plaintiff’s G2 hair styling iron. Any observed

confusion may then be attributable to two possible sources of similarity between these products: (1) the red and black color pattern found on both products that is of interest in this matter and/or (2) the use of “FHI” on the Defendant’s product and “Chi” on the Plaintiff’s product. Accordingly, the “FHI” found on the Defendant’s thermal heat styling brush was altered to “TRA” in the version of this product shown in the test and control groups. This change from “FHI” to “TRA” maintains surface similarities (e.g., two consonants followed by a syllable) while reducing the similarity of the Defendants’ use of “FHI” to the Plaintiff’s use of “Chi.” As a consequence of this change, any observed confusion is a result of the red and black color pattern that appears on both the Plaintiff’s and Defendants’ products.

14. After examining the last of the three items shown in the first product set, participants were instructed: “Next, we would like you to look at several more products and answer questions about each one. On the next page is the first of these products; please look at this product for as long as you would like; when you have finished doing so, please answer the question presented below it.” Following these instructions, participants were shown, one at a time and in a randomized order, three items in the second product set that included the Plaintiff’s Chi G2 hair styling iron as well as a different brand of toothpaste (Oral-B Pro-Expert Sensitive + Gentle Whitening) and shampoo (OGX thick and full biotin & collagen) than appeared in the first product set.

15. For each product in the second set, participants were asked if it was the same brand as, or made by the same company as, the one they had seen from that product category in the first product set. For example, at the bottom of the survey screen showing the Plaintiff’s Chi G2 hair styling iron, participants were asked to “Please indicate whether or not this hair styling product is the same brand as, or is made by the same company as, the hair styling product shown in the set of three products presented earlier in this survey. Please do so by clicking one of the three options below.” Participants indicated their response by selecting one of three options: “Yes, it is”; “Not, it is not”, or “Do not know” (the

order in which these three response options was presented was randomized. Participants responding affirmatively to this question were then asked: “What causes you to recognize this product as having been shown in the set of three products presented earlier in this survey? Please type your answer in the box below, then click ‘Next.’” The survey was programmed such that participants were prevented from revisiting any prior screen they had encountered earlier during the survey.

16. Participants not in the test group were randomly assigned to a control group. There is a certain amount of error in any survey that could be caused by any number of factors, including the nature of the questions asked, participant guessing, or any baseline or “noise” level of confusion that may exist generally among offerings in a product category. By accounting for such error, a control group helps isolate any likelihood of confusion that results from potential similarity between two marks.

17. Thus, control groups are employed in experiments as a means of isolating and directly testing the effects of a particular element (in this matter, the use of a red and black color pattern on both the Plaintiff’s and the Defendants’ products) on consumers’ responses. In trademark surveys, an appropriate control group should be designed to be similar to and share as many features as possible with the stimulus contained in the test group other than the characteristic(s) in question (Diamond 2010, p. 258). Accordingly, in the present survey, the control group employed a methodology similar to that just described with respect to the test group, with one notable exception. Instead of encountering the Defendants’ FHI Heat thermal styling brush featuring the red and black color pattern in the first product set (as did participants in the test group), participants in the control group were presented with an identical FHI Heat thermal styling brush that was primarily blue in color. Other than this change, all other methodological features (i.e., instructions, measures) in the control group were identical to those employed in the test group. Operationally, subtracting the level of confusion found in the control group

with the level of confusion observed in the test group produces a net, or adjusted, likelihood of confusion that accounts for any sources of confusion other than the product elements in question.

V. Survey Results

18. The results (summarized below in Table 1) indicate that 22.3% of the participants in the test group thought that the Plaintiff's Chi G2 hair styling iron was the same brand as, or made by the same company as, the Defendants' red and black thermal styling brush. This percentage can be compared against the percentage of test group participants who incorrectly indicated that the toothpaste (Oral-B) and shampoo (OGX) items they were shown in the second product set were from the same brand, or was made by the same company as, the toothpaste (Tom's) and shampoo (TRESemmé) products presented in the first product set. As shown in Table 1, the 22.3% of confusion reported with respect to the focal hair styling tool product was appreciably higher than the confusion associated with both the toothpaste (9.2%) and shampoo (6.8%) products.

19. As noted earlier in this report (§16 - §17), it is also important to compare the 22.3% of the participants in the test group indicating that the Plaintiff's Chi G2 hair styling iron was the same brand as, or made by the same company as, the Defendants' red and black thermal styling brush with the percentage doing so in the control group. The results in Table 1 demonstrate that 11.8% of respondents in the control group responded that the Plaintiff's Chi G2 hair styling iron was the same brand as, or made by the same company as, the Defendants' blue and black thermal styling brush. Subtracting this 11.8% "noise" rate of confusion from the 22.3% confusion level observed in the test group results in a net confusion level of 10.5%. These findings demonstrate that the net, or adjusted, level of confusion existing between the Plaintiff's Chi G2 red and black hair styling iron and the Defendants' red and black thermal styling brush is 10.5%.

TABLE 1

	Confusion in Test Group	Confusion in Control Group	Adjusted (or net) Confusion
All Respondents	206 (100%)	204 (100%)	
<i>Number (%) of participants responding "YES" to:</i>			
Please indicate whether or not this hair styling product is the same brand as, or is made by the same company as, the hair styling product shown in the set of three products presented earlier in this survey.	46 (22.3%)	24 (11.8%)	22 (10.5%)
Please indicate whether or not this toothpaste product is the same brand as, or is made by the same company as, the toothpaste product shown in the set of three products presented earlier in this survey.	19 (9.2%)	20 (9.8%)	
Please indicate whether or not this shampoo product is the same brand as, or is made by the same company as, the shampoo product shown in the set of three products presented earlier in this survey.	14 (6.8%)	12 (5.9%)	

VI. Conclusions

20. From the results just described, it is my professional opinion that 10.5% of relevant consumers will experience confusion between the Defendants' FHI Heat thermal styling brush and the Plaintiff's Chi G2 hairstyling iron.



Dr. Michael J. Barone
November 30, 2015

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Plaintiff's First Amended Original Complaint and Application for Injunctive Relief.

APPENDIX A: CURRICULUM VITAE OF MICHAEL J. BARONE

MICHAEL J. BARONE

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EDUCATION

Ph.D., Marketing, University of South Carolina, 1994
M.B.A., George Washington University, 1990
B.A., Economics, University of Michigan, 1984

ACADEMIC EXPERIENCE

Professor of Marketing and University Scholar (07/10 - present), University of Louisville
Associate Professor of Marketing and University Scholar (07/07- present), University of Louisville
Associate Professor of Marketing (4/00–06/07) & Dean's Faculty Fellow (6/05-06/07), Iowa State Univ.
Assistant Professor of Marketing, Iowa State University (6/97 – 4/00)
Assistant Professor of Marketing, Florida International University (FIU), 9/95 - 5/97
Assistant Professor of Marketing, Clark University, 9/94 – 6/95

HONORS AND AWARDS

Research-Related

Top Productive Researchers in the Premier AMA Journals, 2009-2013 (AMA DocSIG, 2013)
Top Productive Researchers in the Premier AMA Journals, 2010-2014 (AMA DocSIG, 2014)
Recipient, Research Award, UofL COB – 2010, 2013, 2015.
Top 25 Productive Advertising Researchers, 1997-2006 (*Journal of Advertising*, 2008).
Top Productive Researchers in Marketing, 2000-2007 (AMA DocSIG, 2008)
“High Honors” distinction, Honor Roll of Consumer Researchers (Blackwell, Miniard, & Engel 2006).
Recipient, Dean's Advisory Council Research Award, ISU COB - 1999, 2005.
Nominee, Dean's Advisory Council Research Award, ISU COB - 1998, 1999, 2000, 2001, 2005, 2006.
Nominee, Early Achievement in Research Award, ISU - 1999.
Nominee, Don Lehmann Award (best dissertation-based article in *JMR/JM*) - 1999.

Teaching-Related

Recipient, Graduate Teaching Award, UofL COB, 2010-2011.
Recipient, IMBA Professor the Year, UofL COB, 2009-2010.
Nominee, Faculty Favorite, UofL Delphi Center, 2007 – 2010, 2012.
Recipient, Delta Sigma Pi Marketing Professor of the Year - 2003.
Recipient, Business Council Outstanding Teacher Award, ISU College of Business - 2000.
Recipient, Business Council Teacher of the Month, ISU College of Business - September 2001.
Nominee, Veishea Faculty of the Year, ISU - 2000, 2001, 2004, 2006, 2007.
Nominee, Dean's Advisory Council UG Teaching Award, ISU Business College – 1999-2002, 2004, 2006.
ISU Interfraternity Council/Panhellenic Council Outstanding Faculty Member - 1999, 2000, 2001, 2003, 2005.

Other

Recipient, Faculty Excellence Award, UofL COB –2010, 2013.
 Top Ten Reviewer, *Journal of Consumer Psychology*, 2008-2009, 2009-2010.
 Recipient, Dean's Advisory Council Business Impact Award, ISU College of Business (2006).
 Outstanding Reviewer, *Journal of Advertising*, 2004, 2011
 Outstanding Reviewer (Honorable Mention), *Journal of Advertising*, 2008
 Who's Who in Business Higher Education, 2003 - Present
 Who's Who in Among Executives and Professionals (Honor's Edition), 2007 - Present.
 American Marketing Association Doctoral Consortium Fellow, 1993
 Beta Gamma Sigma, George Washington University and University of South Carolina
 Merit Scholarship Award, University of Michigan, 1981.

JOURNAL ARTICLES

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Barone, Michael J. and Keith Coulter (2014), "The Upside of Down: The Effects of Vertical Price Orientation on Consumer Decision Making," *Status*: under initial review at the *Journal of Consumer Research*.

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Sprott, David E., Terence A. Shimp, and **Michael J. Barone** (2015), "Gender as a Moderator of Ownership Effects," *Status*: revising for resubmission to the *Journal of Consumer Research*.

MANUSCRIPTS IN PREPARATION

Barone, Michael J., Dan Freeman, and Jennifer Gregan-Paxton (2015), "Assessing the Effects of Brands on Children's First Impressions of Peers," *Status*: preparing submission to *Marketing Letters*.

Jewell, Robert D., **Michael J. Barone**, and Beth Davis-Sramek (2014), "Giving Credit Where Credit is Due: Examining Consumers' Ability to Monitor Shifts in Brand Innovation Credit," *Status*: preparing submission to *Journal of Business Research*.

Barone, Michael J., Robert D. Jewell, and Marie Yeh (2015), "Comparative Advertising as a Platform for Power Regulation," *Status*: preparing manuscript for submission to the *Journal of Consumer Research*.

Barone, Michael J., Keith B. Lyle, and Karen Page Winterich (2015), "Trait-Based Fluency Effects: Power Effects on Consumer Preferences for Horizontal versus Vertical Price Comparisons," *Status*: preparing manuscript for submission to the *Journal of Marketing Research*.

RESEARCH IN PROGRESS

Are Even Prices ‘Right’? Consumers Prefer Even Prices Presented on the Right and Odd Prices on the Left) with L. Cian), *Target: Journal of Consumer Research*, Status: data collection stage.

The Influence of Familial Identification on Consumer Evaluations of Family Branding Strategies (C. Torelli and M. Rodas), *Target: Journal of Consumer Research*, Status: data collection stage.

Accuracy Bonuses in Consumer Perceptions of Satisfaction (with R. Carter), *Target: Journal of Marketing*, Status: data collection stage.

SELECTED PRESENTATIONS

“The Upside of Down: Price Location Effects in Consumer Decision Making,” invited presentation, University of Louisville COB, 2015.

“Comparative Advertising as a Platform for Power Regulation,” invited presentation, Kent State University COB, 2015.

“Using Amazon’s Mechanical Turk (mTurk) for Behavioral Research in Business,” invited presentation, University of Louisville COB, 2014.

“The Upside of Down: Price Location Effects in Consumer Decision Making,” invited presentation, University of Alabama-Birmingham COB, 2015.

“The Upside of Down: Price Location Effects in Consumer Decision Making,” invited presentation, University of Kentucky COB, 2015.

“Power and the Appeal of the Deal: How Exchange Processes Promote Power Regulation” presentation at the 2013 UL-UK Marketing Colloquium, University of Louisville (with TJ Bae, Shanshan Qian, and Jason D’Mello).

“Why Do People Donate? The Role of Identities in Consumer Giving” presentation at the 2012 Marketing Academic Research Colloquium (MARC), University of Pittsburgh (with Karen Page Winterich)

“Social Marketing Intervention and Depression Treatment in Adolescent Mothers” poster presentation at the 2012 Society for Adolescent Health and Medicine Conference (with M. Cynthia Logsdon et al.).

“Power Distance Belief and Comparative Advertising” poster presentation at the 2011 Society of Judgment and Decision Making Conference, Seattle, WA (with Shailendra Jain and Xingbo Li)

“Warm Glow or Cold, Hard Cash? Social Identity Effects on Consumer Choice for Donation versus Discount Promotions,” presentation at 2011 Seminar Series, College of Business, University of Louisville.

“Warm Glow or Cold, Hard Cash? Social Identity Effects on Consumer Choice for Donation versus Discount Promotions,” presentation at 2011 Seminar Series, Dept. of Marketing, University of Kentucky.

“Warm Glow or Cold, Hard Cash? Social Identity Effects on Consumer Choice for Donation versus Discount Promotions,” presentation at 2010 Seminar Series, Dept. of Psychology, University of Louisville.

"Generating Ideas in Consumer Psychology: A Research Prospectus for Marketing Placebo Effects," presentation at 2010 Seminar Series, Department of Marketing, University of Cincinnati.

"The Effects of Salesperson Argument Strength, Consumers Suspicion and Positive Mood on Salesperson Evaluation and Purchase Intention" presentation at the 2007 Academy of Marketing Science Conference (with Thomas E. DeCarlo)

"The Influence of Comparative Prices on Consumer Processing of Noncomparative Price Information," Society for Consumer Psychology Conference, February 2002.

"Ad Claim Strength and the Ad Budget Signal," Association for Consumer Research Conference, October 1999.

"The Influence of Comparative and Noncomparative Advertising on Competitive and Noncompetitive Product Positioning," Association for Consumer Research Conference, October 1999.

"The Relative Frame Bias and the Role of Comparison Brand Usage," University of Iowa, October 1995.

"The Influence of Relative Frames on Consumer Responses to Noncomparative Ad Information," Florida International University, February 1995.

"Does Exclusivity Always Pay Off? Exclusive Price Promotions and Consumer Response," presentation at 2007 Seminar Series, College of Business, University of Louisville.

TEACHING MATERIALS

Miniard, Paul W. and **Michael J. Barone** (1995), *Instructor's Manual* for Engel, Blackwell, and Miniard's *Consumer Behavior*, 8th Ed., Fort Worth, TX: The Dryden Press.

Miniard, Paul W. and **Michael J. Barone** (1995), *Instructor's Manual: Test Bank* for Engel, Blackwell, and Miniard's *Consumer Behavior*, 8th Ed., Fort Worth, TX: The Dryden Press.

Miniard, Paul W. and **Michael J. Barone** (1994), *Instructor's Manual: Test Bank* for Dickson's *Marketing Management*, 1st Ed., Fort Worth, TX: Harcourt Brace & Company.

Miniard, Paul W. and **Michael J. Barone** (1993), *Instructor's Manual: Test Bank* for Engel, Blackwell, and Miniard's *Consumer Behavior*, 7th Ed., Fort Worth, TX: The Dryden Press.

SERVICE

Service to the Discipline

Editorial Review Boards

Journal of Consumer Research (Member), 2015 – Present

Marketing Letters (Member), 2013 – Present

Journal of Consumer Psychology (Member), 2004 – Present

Journal of the Academy of Marketing Science (Member), 2008 – Present

Journal of Advertising (Member), 2003 – 2010 (Resigned)

Journal of Business Research (Member), 2006 – 2009 (Resigned)
Journal of Current Issues and Research in Advertising (Member), 2009 – 2010 (Resigned)
Academy of Marketing Science Review (Member), 1999 – 2009.
Journal of Consumer and Market Research (Member), 1998 – 1999.

Reviewer - Journals

Journal of Consumer Research (2002-Present)
Journal of Marketing Research (1998-Present)
Journal of Marketing (2003-Present)
Journal of Consumer Psychology (2002-Present)
Journal of the Academy of Marketing Science (2006-Present)
Marketing Letters (2005-Present)
Journal of Advertising (2003-Present)
Journal of Retailing (1997-Present)
Journal of Public Policy and Marketing (1998-Present)
Journal of Information Technology (1999-Present)
European Journal of Social Psychology (2003 – Present)
Journal of Managerial Psychology (2005-Present).

Reviewer - Conference Proceedings

Association for Consumer Research Conference (1995 – 2006, 2008-2011)
American Marketing Association Conference (1996, 1998 – 2005, 2009-2010)
Advances in Marketing Science Conference (2010-2011)
European Marketing Academy Conference (2009-2011)
Marketing and Public Policy Conference (1999, 2002)
Society for Consumer Psychology Conference (2000-2004, 206-2009)
American Association of Advertising Conference (2002, 2004).

Reviewer - Text Books

Principles of Marketing (1e), Peter Dickson et al. (Reviewed Pricing Chapter written by J. Urbany).

Conference Associate Editor/Track Chair

Association for Consumer Research, Associate Editor (2008).
American Marketing Association Summer Educators' Conference, Retailing and Pricing Track (2007)
American Marketing Association Summer Educators' Conference, Marketing Communications Track (2003).

Competitive/Special Session Chair

Association for Consumer Research conference – Competitive Session Chair (1995, 2000-2001, 2004)
American Marketing Association Summer Educators' Conference – Competitive Session Chair (1996).
Association for Consumer Research conference – Special Session Chair (1996, 1998, 2000).

Discussant

American Marketing Association Winter Educators' Conference (1999).

Faculty Invitee/ Panel Participant

Association for Consumer Research, Mid-Career Mentorship Program (2014)
Nebraska Doctoral Symposium (1998, 1999, 2000).

Service to the University

Council of Research Deans and of the Faculty Research Advisory Council (UL) - COB Representative 2014
 Faculty Senate Curriculum Committee (ISU) – College of Business Representative, 2003.
 University Academic Standards Committee (ISU) - College of Business Representative, 2000–2001.
 University Honors Committee (ISU) - College of Business Representative, 1998 – 1999.

Service to the College

Marketing Department Faculty Search (UofL College of Business) – Chair, 2014.
 Dean Search Committee (UofL College of Business) – Co-Chair, 2012-2013.
 Ph.D. Program Committee (UofL College of Business) – Member, 2007-2012.
 PMBA Program Committee (UofL College of Business) – Member, 2009-Present.
 IMBA Program Committee (UofL College of Business) – Member, 2008-Present.
 MBA Grievance Committee (UofL College of Business) – Member, 2013-Present
 Executive MBA Program Committee (UofL College of Business) – Member, 2013 – Present.
 Executive MBA Steering Committee (UofL College of Business) – Member, 2014 – Present.
 Research Committee (UofL College of Business) – Member, 2011-2014; Chair, 2014 – Present.
 Ph.D. Program Review Task Force (UofL College of Business) – Member, 2009, 2011.
 College Summer Research Grant Committee (UofL College of Business) – Member, 2008-Present.
 Ph.D. Qualifying Examination Grader (UofL College of Business) – 2008-2009.
 Faculty Development Committee (ISU College of Business) - Member, 2004–2007.
 Curriculum Committee (ISU College of Business) - Chair, 2003 – 2004; Member, 2001– 2003.
 Focus Area Task Force (ISU College of Business) - Member, 2001
 Academic Standards Committee (ISU College of Business) - Member, 1998–2000; Chair, 2000–2001.
 College of Business Promotion and Tenure Document Revision Committee (ISU) – Member, 1999-2000.
 Ph.D. Program Committee (FIU) - Member, 1995- 1997.
 Graduate Curriculum Committee (FIU) - Member, 1996- 1997.

Service to the Department

Marketing Department Subject Pool Committee (UofL Department of Marketing) – 2008-Present.
 Junior Faculty Mentoring Committee (UofL Department of Marketing) – 2010-Present.
 Honors Project Advisor (UofL) – W. Stidham.
 Undergraduate Scholarship Committee (ISU Department of Marketing) - 2005
 Marketing Faculty Search Committee (ISU Department of Marketing) – 2003, 2005, 2006.
 Non-tenure Track Instructor Selection Committee (ISU Department of Marketing) – 2003
 Non-Tenure Track Document Committee (ISU Department of Marketing) – 2003
 Distinguished Speaker Series Coordinator (ISU Department of Marketing) – Co-chair, 2004
 Department of Marketing P&T Document Revision Committee (ISU) – Member, 1999-2000.
 Department of Marketing P&T Committee (ISU) – Member (2001), Chair (2002).
 Coordinator - ISU Marketing Department Brown Bag Seminar Series, Fall 1999-Present.
 Coordinator – ISU – University of Iowa Judgment and Decision Making Seminar, August 2000.
 Master's Thesis Committee (ISU) – J. Hicks, T. Dayal, C. Jones III, E. Slevitch, M. Hamaker, B. Tierney.
 Faculty Advisor - ISU Marketing Club, September 1997-Spring 1999.
 Independent Study Advisor (ISU) – Zachary Crane, Kevin Fix, Jeff Buchheit (MBA), Dylan DeBruin, Kate Malone,
 Paul Bloyer, Tuhina Doyal (MBA), Deborah Howe, W. Reid Morris
 Honors Project Advisor (ISU) – Cole Kopacek, Kelley Stevens, Sean Wilkinson, Haryanto Kurniawan.
 McNair Scholars Program (ISU) - Faculty Advisor to Olatomi Fadeyi, Tim Quick.
 Dissertation Committee - Member for Shanshan Qian (UofL), Shaunn Mattingly (UofL), Qian Ye (UofL), Rodney D'Souza (UofL), Harriet McLeod (ISU), Sandipa Dublisch (FIU), Marisa Guillaume (FIU), Les Vermillion (FIU).
 Executive Training - Graduate Diploma in International Marketing (FIU), September 1995-May 1997.

Student Project Mentor - Supervised student projects with Worcester (MA) Commons Fashion Mall (Clark University), Story County Community Life Program (ISU).

PROFESSIONAL AFFILIATIONS

American Marketing Association
Association for Consumer Research
Society for Consumer Psychology
American Academy of Advertising

RESEARCH GRANTS

University of Louisville Improved Health Outcomes Program, "Developing and Testing A Social Marketing Program to improve Health Care Utilization of Teen Mothers with Symptoms of Depression and Anxiety" (with MC Logsdon, J. Gregg, and J. Meyers) funded 2009-2010 (\$49,344).

Leopold Center for Sustainable Agriculture, "Reputational and Environmental Positioning as Sources of Competitive Advantage: Retailer-Level Effects" (with T. DeCarlo) funded Summer 2005 (\$24,500).

Leopold Center for Sustainable Agriculture grant, "Company Environmental and Societal Positions as Sources of Competitive Advantage for Agriculture Producers" (with T. DeCarlo) funded Summer 2004 (\$25,280).

ISU Faculty Development Grant, Summer 2003 (\$10,000), Summer 2004 (\$11,000).

ISU College of Business Mini-Scholarship Grant Award (Spring 2003, \$600; Fall 2004, \$750; Spring 2005, \$625).

MATRIC grant, "Emerging Strategies for Creating Global Competitive Advantages: Implications for Agricultural Producers" (with T. DeCarlo as co-principal investigator) funded Summer 2002 (\$21,000).

ISU Faculty Development Grant, Summer 2000 (\$6,000).

Spring Research Initiation Grant at Iowa State University funded Spring 1998 (\$5,000).

INDUSTRY AND CONSULTING EXPERIENCE

Expert Witness

Retained by BoyarMiller LLP for expert consulting services re: *Farouk Systems, Inc. v. AG Global Products LLC, d/b/a FHI Heat, LLC and Shauky Gulamani*.

Retained by Morgan, Lewis, and Bockius, LLP for expert consulting services re: *Certain Footwear Products* (U.S.I.T.C. Complaint).

Retained by Kelly IP, LLP for expert consulting services re: *S.C. Johnson and Sons, Inc. v. Stoner, Inc.*

Retained by Brennan, Manna, & Diamond, LLC for expert consulting services re: *David Mowder v. Permanent General Assurance Corporation of Ohio et al.*

Retained by Kelly IP, LLP for expert consulting services re: *Koninklijke Philips Electronics N.V. v. Hunt Control Systems, Inc.*

Retained by ORCInternational for expert consulting services re: *Verisign, Inc. v. Dot Agency Limited.*

Retained by Parker, Hudson, Rainer, and Dobbs LLP for expert consulting services re: *Swift v. Bancorp, Inc.*

Retained by Tomlinson, Rust, McKinstry, and Grable for expert consulting services re: *The Charles Machine Works, Inc. v. Vermeer Manufacturing Company.*

Retained by Jacobson Holman PLLC for expert consulting services re: *Perfetti Van Melle USA v. Cadbury Adams USA LLC.*

Retained by Tomlinson and O'Connell PC for expert consulting services re: *H-D Michigan, Inc. and Harley-Davidson Motor Company Group, Inc. d/b/a Harley-Davidson Motor Company v. Ridley Motorcycle Company.*

Retained by Freeborn & Peters for expert consulting services re: *Columbik & Associates, Inc. et al. v. John Burgess et al.*

Retained by Darby and Darby PC for expert consulting services re: *The Procter & Gamble Company v. Colgate-Palmolive Company.*

Retained by McKee, Voorhees, and Sease, PLC for expert consulting services re: *Wells' Dairy, Inc. v. Nestle S.A., Societe-Des Products Nestle, S.A., Nestle U.S.A., Inc., Nestle U.S.A. Prepared Foods Division, Inc. and Nestle Ice Cream, LLC.*

Retained by Darby and Darby PC and Goodwin Proctor LLP for expert consulting services re: *Morgan Chase Group, Inc and Morgan Chase Trust Company v. The Chase Manhattan Corporation and J.P. Morgan Chase & Co., Incorporated.*

Retained by Schachter & Associates for expert consulting services re: *Jason Bacher v. Wing Eyecare et al.*

Retained by LaMarca & Landry, P.C., for expert consulting services re: *National Concrete Services, Inc. v. Menard, Inc.*

Consultations

AimsBio, Inc.
Atlas Technologies
Chegg, Inc.
Colgate-Palmolive, Inc.
Doe-Anderson, LLC
Firearms Policy Group
Iowa State University Foundation
Lotus Development Corporation
State of Iowa, Board of Regents
Wellmark/Blue Cross – Blue Shield

ARDL, LLC.
Boys and Girls Club of America
Coalescence, Inc.
Color FX, Inc.
Federal Trade Commission
IMEP, Inc.
Lansing Housing Products, Inc.
Monoclonal Partnerships International, Inc.
Stoner, Inc.

Financial Analyst

IBM Corporation, December 1984 to July 1991. Provided sales and costs analyses to marketing group. Involved in pricing decisions for computer hardware products.

REFERENCES

Professor Gary J. Gaeth
Cedar Rapids Area Business Chair
University of Iowa
College of Business Administration
Department of Marketing
Iowa City, IA 52242-1000
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Professor Terence A. Shimp (Emeritus)
W.W. Johnson Distinguished Foundation Fellow
University of South Carolina
College of Business Administration
Department of Marketing
Columbia, SC 29208
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Professor Paul W. Miniard
Knight-Ridder Eminent Scholar
Florida International University
College of Business Administration
Department of Marketing
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Professor Joel E. Urbany
Notre Dame University
College of Business Administration
Department of Marketing
Notre Dame, IN 46556
Phone: (219)631-6762
joe.urbany.1@nd.edu

APPENDIX B: QUESTIONNAIRE SURVEY

Thank you for agreeing to participate in this survey. Please answer every question honestly and to the best of your ability. There are no right or wrong answers; we are only interested in your opinions, and all of your responses will be kept confidential and anonymous. If you don't know the answer to a question, select the "DON'T KNOW" response option or type it in. Please do not guess. To continue with the survey, please click "Next."

If you are currently using a mobile device or tablet to access this survey, please log out and return to this survey from a personal computer or laptop. To continue with the survey, please click "Next."

S1. In which state do you currently reside? *State Drop Down List. If "I do not reside in the United States" is selected, Terminate. Check Quotas for Census Region.*

S2. Please indicate your gender:

☐ Male ☐ Female *Check Quotas for Gender.*

S3. What is your age? Please type your age in the box below, then click "Next."

Respondent must be 18 years of age or older to qualify, otherwise terminate. Check Quotas for Age.

S4. Do you, or does anyone in your household, work for any of the following? *Randomize row order.*

Advertising agency ☐ **Yes Terminate** ☐ No

Market research firm ☐ **Yes Terminate** ☐ No

Manufacturer, distributor or retailer of toothpaste ☐ Yes ☐ No

Manufacturer, distributor or retailer of hair care products ☐ **Yes Terminate** ☐ No

Note: S5, S6, S7 were presented in a randomized order.

S5. Have you purchased shampoo in the last 6 months or do you plan to purchase shampoo in the next 6 months?

☐ Yes ☐ No

S6. Have you purchased hair styling tools (e.g., thermal styling brushes, styling irons, hair dryers) in the last 6 months or do you plan to purchase hair styling tools (e.g., thermal styling brushes, styling irons, hair dryers) in the next 6 months?

☐ Yes ☐ **No Terminate**

S7. Have you purchased toothpaste in the last 6 months or do you plan to purchase toothpaste in the next 6 months?

☐ Yes ☐ No

S8. For survey quality control purposes, please select the number 8.

- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4
- ☐ 5
- ☐ 6
- ☐ 7
- ☐ 8
- ☐ 9
- ☐ 10

If 8 Is Not Selected, Then Terminate.

S9. Do you usually wear eyeglasses or contact lenses when reading material on a computer screen?

- ☐ Yes ☐ No ***if No, skip S10, S11***

S10. Are you wearing them now?

- ☐ Yes, ***if Yes, skip S11*** ☐ No

S11. Will you please take them out and put them on for the remainder of the survey?

- ☐ Yes ☐ No ***Terminate***

MAIN SURVEY:

On the following screens, you will be shown several products. Please click "Next" when you are done looking at each product. Note that, depending on the monitor and browser you are using, you may need to wait a few seconds for each image to load; you may also need to scroll down to fully view the image.

1. SHOW FIRST PRODUCT SET.

Next, we would like you to look at several more products and answer questions about each one.

On the next page is the first of these products; please look at this product for as long as you would like; when you have finished doing so, please answer the question presented below it.

Products shown one at a time and in a randomized order.

2. SHOW SECOND PRODUCT SET. *Products shown one at a time and in a randomized order.*

3a. Please indicate whether or not this hair styling product is the same brand as, or is made by the same company as, the hair styling product shown in the set of three products presented earlier in this survey. Please do so by clicking one of the three options below. ***Randomized choice option order, allow one response. If "No, it is not", or "Do not know" is selected, skip question b.***

- ☐ Yes, it is ☐ No, it is not ☐ Do not know

b. What causes you to recognize this product as having been shown in the set of three products presented earlier in this survey? Please type your answer in the box below, then click "Next."

4a. Please indicate whether or not this toothpaste product is the same brand as, or is made by the same company as, the toothpaste product shown in the set of three products presented earlier in this survey. Please do so by clicking one of the three options below. *Randomized choice option order, allow one response. If "No, it is not", or "Do not know" is selected, skip b.*

☐ Yes, it is ☐ No, it is not ☐ Do not know

b. What causes you to recognize this product as having been shown in the set of three products presented earlier in this survey? Please type your answer in the box below, then click "Next."

5a. Please indicate whether or not this shampoo product is the same brand as, or is made by the same company as, the shampoo product shown in the set of three products presented earlier in this survey. Please do so by clicking one of the three options below. *Randomized choice option order, allow one response. If "No, it is not", or "Do not know" is selected, skip b.*

☐ Yes, it is ☐ No, it is not ☐ Do not know

b. What causes you to recognize this product as having been shown in the set of three products presented earlier in this survey? Please type your answer in the box below, then click "Next."

VALIDATION:

Please select which best describes how you feel about the validation statement below:

During this session, I have recorded a truthful and complete account of my answers to this survey.

☐ I have read and AGREE with the above validation statement.

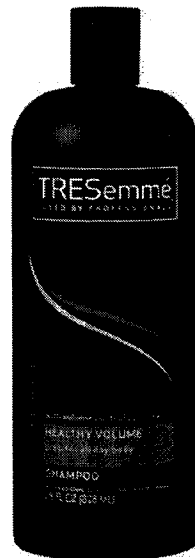
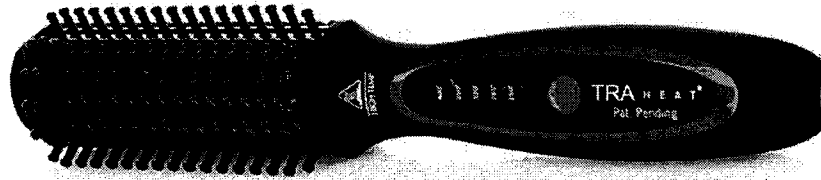
☐ I do NOT AGREE with the above validation statement.

We thank you for your time spent taking this survey. Your response has been recorded.

APPENDIX C: IMAGES SHOWN TO TEST GROUP (REDUCED SIZE)

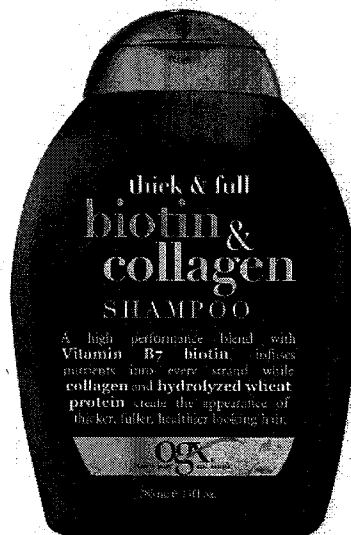
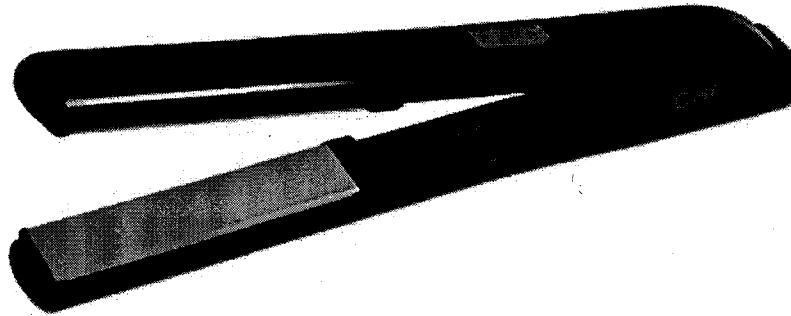
First Product Set

Note: The order in which the following three images were presented to participants was randomized to avoid order bias.



Second Product Set

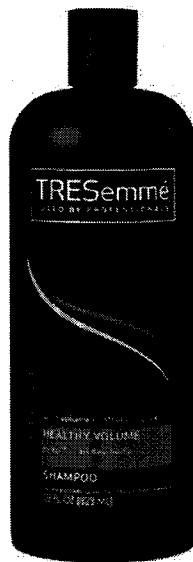
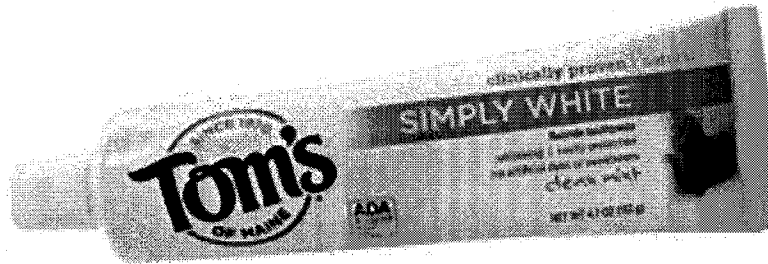
Note: The order in which the following three images were presented to participants was randomized to avoid order bias.



APPENDIX D: IMAGES SHOWN TO CONTROL GROUP (REDUCED SIZE)

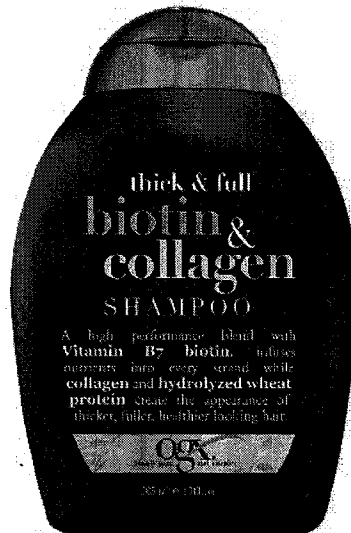
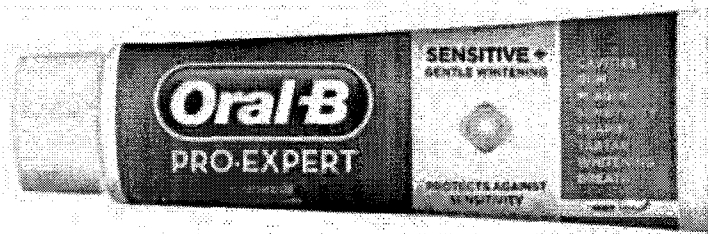
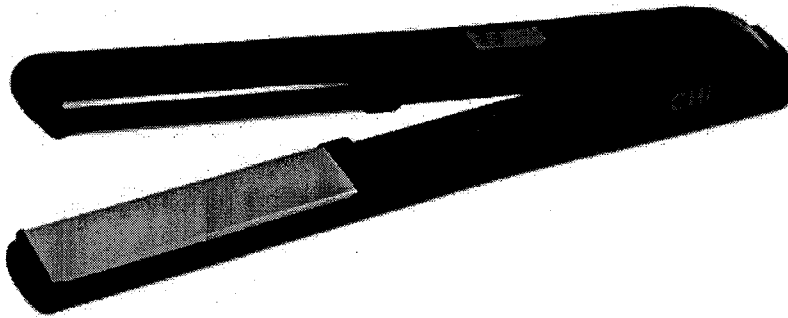
First Product Set

Note: The order in which the following three images were presented to participants was randomized to avoid order bias.



Second Product Set

Note: The order in which the following three images were presented to participants was randomized to avoid order bias.



APPENDIX E: SCREENING SUMMARY

Total Screen Respondents		<u>877</u>
<u>Terminated:</u>		<u>(459)</u>
Under 18	3	
Not Hair Styling Tool Buyer	368	
Sensitive Industry	81	
No Glasses or Contact Lenses	1	
Quality Control Question	6	
Data Quality Issues		(6)
Validation Question		(2)
<u>Total Reported Completes</u>		<u>410</u>

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FAROUK SYSTEMS, INC.,)
)
Plaintiff,)
)
vs.) No. 4:15-cv-00465
)
AG GLOBAL PRODUCTS, LLC, d/b/a)
FHI HEAT, LLC, and SHAUKY)
GULAMANI,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF SHAUKY GULAMANI,
taken on behalf of the Plaintiff, at 1000 Wilshire
Boulevard, Suite 1500, Los Angeles, California,
commencing at 10:05 A.M., on Tuesday, January 19, 2016,
pursuant to Notice, before STACY MOLINA, CSR No. 14064,
a Certified Shorthand Reporter, in and for the County of
Los Angeles, State of California.

MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com

1 APPEARANCES:

2 For the Plaintiff:

3 BOYAR MILLER

BY: ANDREW PEARCE, ESQ.

4 CHRISTOPHER T. JAMES, ESQ.

2925 Richmond Avenue

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Houston, Texas 77098

6 (713) 850-7766

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7 apearce@boyarmiller.com

8 For the Defendants:

9 BUCHALTER NEMER

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10 1000 Wilshire Boulevard

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11 Los Angeles, California 90017

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13

Also Present:

14

Daniel Bobroff

15

16

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1 I N D E X

2

3	WITNESS	EXAMINATION	PAGE
4	Shauky Gulamani	By Mr. Pearce	6

5

6 E X H I B I T S

7	PLAINTIFF'S	PAGE
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8	1 - Notice; seven pages	9
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9	2 - Notice; thirteen pages	9
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10	3 - Response to Interrogatories; fifteen pages	13
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11	4 - Second Amended Complaint; thirteen pages	81
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12	5 - Original Complaint and Application for	83
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Preliminary Injunction; eleven pages,

13 CONFIDENTIAL

14	6 - CHI Magazine; ten pages, CONFIDENTIAL	107
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15	7 - Press release; one page, CONFIDENTIAL	112
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16	8 - CHI Magazine Mailout List Master 2009;	114
	fourteen pages, CONFIDENTIAL	

17

18	9 - The Man Behind the Brand: Shauky Gulamani;	130
	two pages	

19	10 - FHI Brands Web site page: Stylus; two pages	169
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20	11 - FHI Brands Web site page: Dry; three pages	172
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21	12 - FHI Brands Web site page: Smooth; three	183
	pages	

22

23	13 - FHI Brands Web site page: Curl; two pages	185
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23

24	14 - FHI Brands.com: About Us; one page	189
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24

25	15 - Farouk Systems, Inc., Web site page: Tools;	191
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1 I N D E X
(Continued)

2
3 E X H I B I T S

4	PLAINTIFF'S	PAGE
5	16 - Spreadsheet; eight pages, CONFIDENTIAL	204
6	17 - E-mail string; seven pages, CONFIDENTIAL	218
7	18 - Spreadsheet; one page, CONFIDENTIAL	228
8	19 - Facebook printout; one page, CONFIDENTIAL	229
9	20 - Linkedin printout; one page, CONFIDENTIAL	234
10	21 - Settlement Agreement; twenty-one pages	239
11	22 - Pinterest printout; one page, CONFIDENTIAL	251
12	23 - Facebook: FHI Heat; one page, CONFIDENTIAL	251
13	24 - Pablo Picasso phrase; one page, CONFIDENTIAL	255

14	QUESTIONS INSTRUCTED NOT TO ANSWER
15	PAGE LINE
16	93 21
17	211 8

18	INFORMATION REQUESTED
19	None.

20
21
22
23
24
25

1 LOS ANGELES, CALIFORNIA; TUESDAY, JANUARY 19, 2016

2 10:05 A.M.

3

4 VIDEOGRAPHER: Good morning. We are now on
5 the record. This begins videotape No. 1 in the video 10:04:36AM
6 deposition of Shauky Gulamani in the matter of Farouk
7 Systems, Inc., versus AG Global Products, LLC, DBA
8 FHI Heat, LLC, and Shauky Gulamani in the district court
9 of southern Texas, Civil Action No. 4:15-cv-00465.

10 Today's date is Tuesday, January 19th, 2016, 10:05:06AM
11 and the time is approximately 10:05 a.m. This
12 deposition is being taken at 1000 Wilshire Boulevard,
13 Suite 1500, Los Angeles, CA 90017, and was made at the
14 request of Boyar Miller.

15 The videographer is Rosie Uribe of Magna Legal 10:05:28AM
16 Services, and the court reporter is Stacy Molina of
17 Magna Legal Services.

18 Will counsel and all parties present please
19 state your appearances and whom you represent for the
20 record. 10:05:42AM

21 MR. PEARCE: Andrew Pearce with Boyar Miller
22 on behalf of Farouk Systems, Inc.

23 MR. JAMES: Chris James, counsel for Boyar
24 Miller on behalf of Farouk Systems, Inc.

25 MR. ADDISON: Robert Addison of Buchalter 10:05:53AM

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1 Nemer on behalf of the defendants.

10:05:53AM

2 VIDEOGRAPHER: Will the court reporter please
3 swear in the witness.

4

5 SHAUKY GULAMANI,

10:06:03AM

6 called as a witness by and on behalf
7 of the Plaintiff, being first duly
8 sworn, was examined and testified as
9 follows:

10

10:06:03AM

11 THE COURT REPORTER: Please state and spell
12 your name for the record.

13 THE WITNESS: Shauky Gulamani. Shauky,
14 S-h-a-u-k-y; Gulamani, G-u-l-a-m-a-n-i.

15

10:06:20AM

16 EXAMINATION

17 BY MR. PEARCE:

18 Q. Good morning, Mr. Gulamani.

19 A. Good morning.

20 Q. My name is Andrew Pearce, you may have just

10:06:24AM

21 heard, and you understand that I'm here on behalf of
22 Farouk Systems, Inc., in a lawsuit that Farouk Systems
23 filed against AG Global Products, LLC, doing business as
24 FHI Heat, LLC, and you individually?

25 A. Yes.

10:06:42AM

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1 Q. That's an image of you?

12:51:49PM

2 A. Correct.

3 Q. And that -- that carried through. Was that
4 image used in every publication of the CHI Magazine?

5 A. I believe so.

12:52:03PM

6 Q. Okay. Do you recall where this image came
7 from?

8 A. Yes.

9 Q. Where?

10 A. It was taken by a photographer in New York by 12:52:06PM
11 the name of Fadil Berisha.

12 Q. You're going to have to spell that for me.

13 A. First name F-a-d-i-l.

14 Q. F-a-d-i-l?

15 A. Yep. Last name, I am not sure of the 12:52:15PM
16 spelling. I believe it's B-e-r-a-s-h-a. [sic]

17 Q. Fadil was his first name?

18 A. Correct.

19 Q. You want to go by that?

20 A. Sure.

12:52:30PM

21 Q. In New York?

22 A. Correct.

23 Q. Do you recall when?

24 A. Not the exact time.

25 Q. Was Fadil Berisha --

12:52:36PM

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1 A. Yep.

12:52:40PM

2 Q. -- a professional photographer?

3 A. Yes.

4 Q. Okay. Do you -- so he was hired to take this
5 photograph?

12:52:46PM

6 A. He took the photograph for me at an end of a
7 photo shoot as a favor as a picture for myself.

8 Q. In what photo shoot?

9 A. It was a Miss Universe photo shoot.

10 Q. So he'd been engaged by or retained by the
11 Miss Universe organization?

12:53:07PM

12 A. Correct.

13 Q. And was he taking photos of the contestants?

14 A. He was taking photos of the three girls, Miss
15 Universe, Miss USA, and Miss Teen USA.

12:53:21PM

16 Q. And were -- and you were present at that photo
17 shoot?

18 A. Yes.

19 Q. And why were you present at that photo shoot?

20 A. I was involved in the hair with the pageant,
21 so I was there doing the hair for the girls.

12:53:33PM

22 Q. Okay. So you had done the hair for Miss
23 Universe, Miss USA, and Miss Teen USA --

24 A. Correct.

25 Q. -- at that photo shoot?

12:53:43PM

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1 A. Correct.

12:53:46PM

2 Q. And then did you -- separate then to this
3 photo shoot, did you have a prior relationship with
4 Mr. Berisha?

5 A. I had met him at different Miss Universe
6 pageants as he was their official photographer.

12:53:55PM

7 Q. And at the end of the photo shoot, did you
8 then -- am I understanding -- you approached Mr. Berisha
9 to take a photo of you?

10 A. He actually approached me and said, "Do you
11 mind if I take a photo of you?" I said, "My hair is a
12 mess because I've been working all day." He said, "Let
13 me just do it as a friend and as a favor, and I will
14 crop it in that we can't even see your hair."

12:54:14PM

15 Q. And who made the decision to use that photo in
16 the CHI Magazines?

12:54:33PM

17 A. I did.

18 MR. PEARCE: I'm going to show you Exhibit 7.

19 (Plaintiff's Exhibit 7 was marked for
20 identification by the court reporter
21 and is bound separately.)

12:55:19PM

22 BY MR. PEARCE:

23 Q. Can you -- can you identify for me what
24 Exhibit 7 is?

25 A. It's a press release.

12:55:28PM